



**Kandiyal v Sameer Agricultural & Livestock (Kenya) (Cause 14 of 2020)  
[2025] KEELRC 2625 (KLR) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2625 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 14 OF 2020  
NJ ABUODHA, J  
SEPTEMBER 26, 2025**

**BETWEEN**

**SUNIL KANDIYAL ..... CLAIMANT**

**AND**

**SAMEER AGRICULTURAL & LIVESTOCK (KENYA) ..... RESPONDENT**

**JUDGMENT**

1. The Claimant through a Memorandum of Claim dated 15<sup>th</sup> January, 2020 and pleaded inter alia: -
  - a. The Claimant averred that she was employed by the Respondent as a territory development manager pursuant to an offer letter dated 12<sup>th</sup> August, 2012 on a contract basis.
  - b. The Claimant averred that having successfully served his probationary period he was confirmed to the said position and over time his salary increased to a gross of USD3650 per month which was so as at the time of his termination.
  - c. The Claimant averred that over time, the respondent's Chief Executive Officer, Vice Chairman and Chairman engaged in unfair labour practices to the detriment of the claimant as hereunder;
    - i. Failing to provide a relevant job description to the claimant for the work that he had been employed for and was continuously tossed from one position to another at the Chief Executive Officer, Chairman and Vice Chairman's will without any certainty as to which work, he was to do and how to do it;
    - ii. Forcing the claimant to work and or undertake work in an area that he had not been hired for and not his area of expertise without any trainings or consultations.
    - iii. The respondent often introduced unattainable and unrealistic targets through a very questionable and misused assessment criteria contrary to the terms of the employment



contract and labour laws with the penalty of countless threats of dismissal from employment if the targets are not met.

- iv. Forcing the claimant to work overtime without pay and very late nights, during public holidays and on Sundays with threats of termination of employment if he does not; and
  - v. The perpetual insulting, abusing and use of profanities by the respondent's Chief Executive Officer, the Vice Chairman and Chairman from time to time against the claimant; and
  - vi. Subjecting the claimant to unfavorable and harsh working conditions and environment as described above.
  - vii. Withholding the claimant's payment from the moment his services were unfairly terminated.
  - viii. The respondent often bad-mouthed and engaged the claimant in unnecessary confrontation through the Chief executive officer.
  - ix. Failing to clear him with the immigration department.
  - x. Withholding the claimant's certificate of service
  - xi. Unlawful deductions regarding KRA.
  - xii. Not subjecting the claimant to any hearing even after numerous baseless allegations.
- d. The Claimant averred that the respondent via a letter dated 7<sup>th</sup> December, 2018 issued him a termination letter without giving an explanation nor issuing him a notice to show cause and that the issues raised were strange to him.
- e. The Claimant averred that no disciplinary hearing was conducted, no opportunity to be heard hence the whole procedure was flawed.

2. The Claimant in the upshot prayed for the following against the Respondent: -

- i. A declaration that the respondent's conduct in handling the claimant's employment period amounted to unfair, unlawful and in breach of the Employment Act and principles of employment law.
- ii. Damages for unfair and constructive dismissal from employment equivalent to twelve (12) months gross salary totaling to 43,800 USD with interest thereon at court rates from the date of award until payment thereof in full.
- iii. One month's salary in lieu of notices of 3650 USD.
- iv. Unpaid leave allowance for the leave days worked.
- v. Taxes deducted from his salary and not remitted equivalent to 9,000 USD.
- vi. Compensation for the work done.
- vii. Certificate of service
- viii. Costs of the suit plus interest thereon from the date of the award.
- ix. Any other relief that this honourable Court may deem fit and just to grant in the circumstances.



3. The Respondent filed its statement of response dated 20<sup>th</sup> April, 2022 and pleaded as follows;
- a. That it employed the claimant as a sales and distribution manager between 13<sup>th</sup> August 2012 to 7<sup>th</sup> February 2014 when he resigned.
  - b. That the claimant was then paid his terminal dues in full and was subsequently rehired on 17<sup>th</sup> July 2017 to 7<sup>th</sup> December 2018.
  - c. That all the claims pleaded by the claimant are an afterthought due to the following reasons;
    - i. The claimant's last contract of employment dated 17<sup>th</sup> July 2017 clearly stipulated his position in the company as the territory development management which essentially placed him in the sales department under the general sales manager.
    - ii. The claimant has not disclosed the alleged duties he undertook that were not within his mandate.
    - iii. The claimant has not evidenced any document to prove that he raised these concerns with the company for them to be addressed administratively.
    - iv. The claimant's allegations are mere fallacies and unsubstantiated allegations hence meritless.
    - v. The claimant worked from 12<sup>th</sup> August 2012 to 7<sup>th</sup> February 2014 when he resigned and was rehired on 17<sup>th</sup> July 2017, if the respondent was such a bad employer, it's unlikely that the claimant would have accepted to return to the company.
  - d. The respondent particularized reasons why the claimant was not entitled to the reliefs sought and averred that the termination process was procedurally and legally done within the confines of the employment contract and the *Employment Act*.
  - e. The respondent further averred that the claimant was duly paid his terminal dues in full where he accepted the payment of USD 7470.24 as full and final settlement of all his dues for work done in the company. That he was further not entitled to costs since he was barred from bringing any future claims against the company by dint of the release executed between the parties.
  - f. Ultimately, the respondent then prayed that the claimant's claim be dismissed with costs.

### **Evidence**

4. The Claimant called one witness, the Claimant (CW1) herein who testified in court on the 12<sup>th</sup> November 2024. CW1 adopted his witness statement together with the pleadings filed in court on the 16<sup>th</sup> of January 2020 as his evidence in chief.
- a. CW1 testified that he was on a fixed term contract for two years and was terminated on 7<sup>th</sup> December, 2018 for a contract that was to expire on 30<sup>th</sup> June, 2019 without a reason.
  - b. Upon cross examination, CW1 said that he was a graduate in commerce with a Bachelors and Masters degree.
  - c. He stated that his salary at the time of exit was USD 3750 and other allowances.
  - d. He stated that he did not have a job description despite complaining to the management.



- e. He stated that he worked overtime and was abused at work despite not having any evidence in court.
  - f. He denied being paid and final and full settlement amount of USD 7470.24 and that the acknowledgement and release was signed under duress which he did not plead.
  - g. In re-exam he affirmed that his salary included other allowances and that his relationship with the CEO was not smooth.
5. The respondent also called one witness, RW1- Paul Maina., the legal officer of the respondent. He adopted his statement dated 20<sup>th</sup> April, 2022 as his evidence in chief and the documents filed alongside it.
- a. Upon cross examination he confirmed that the claimant was terminated on 7<sup>th</sup> December, 2018.
  - b. He also confirmed that there was no disciplinary hearing nor notices before the termination.
  - c. On the issue of job description, he stated that same was contained in the employment contract of the claimant and that his salary was USD 2750.
  - d. In re-examination, he stated that the claimant's termination was based on clause 13 of the employment contract. He also stated that the employer was not obliged to assign any reason for termination.
6. Both parties closed their cases and the court directed that they file written submissions.

### **Claimants' Submissions**

7. The Claimants' Advocates E. A. Ochieng & Co. Advocates filed written submissions dated 25<sup>th</sup> November 2024. On the issue of whether the Claimant's termination was lawful and procedural, counsel submitted that the Respondent failed to adhere to due process as provided by law during termination of the Claimant's employment.
8. On the issue of whether the Claimant was summarily dismissed and whether this is unjustified in law counsel relied on section 44(1) and 44(g) of the *Employment Act*, 2007. Counsel also submitted that the Claimant was terminated with immediate effect on 7<sup>th</sup> December, 2018 without sufficient notice. He submitted that the respondent violated the salient provisions of the Act.
9. They relied on the Court of Appeal case of Cooperative bank of Kenya Limited vs. Yator (Civil Appeal 87 of 2018) [2021] KECA 95 (KLR) (Civ) and submitted that the act of summarily dismissing the claimant without giving him an opportunity to be heard as was the case herein amounted to unfair termination. On the same issue they equally relied on the case of Pheoby Aloo Inyanga Vs Stockwell One Homes Management Limited & another [2022] eKLR and that of the Court of Appeal of Prof. Macha Isunde vs. Lavington Security Guards Limited [2017] eKLR.
10. On the issue of whether the claimant was subjected to unfair labour practices and whether the disciplinary hearing and appeal as conducted by the Respondent was done in accordance to the law the claimant reiterated the issues as raised in their claim and relied on the case of Francis Aboge Oduk vs Hasbah Kenya Limited [2020] eKLR and submitted that the procedure leading to his termination was overly flawed.
11. On the issue of whether the claimant is entitled to leave days or pay in lieu the claimant submitted that he worked for the respondent for two years with no leave and that he was entitled to one month's leave



for each year worked for. He had worked for 18 months. He submitted that this issue was undisputed by the respondent.

12. Counsel relied on the case of *Adera Vs Central Organization of Trade Unions* (Cause E033 of 2023) [2024] KEELRC 1058 (KLR) (25 April 2024) where the Court awarded leave days to a claimant who had pending leave days.
13. On the issue of whether the Claimant's contract of employment was unfairly terminated, counsel submitted that the Claimant's dismissal was without a valid or justifiable reason and hence void ab initio. He further submitted that the termination culminated from responsibilities that did not belong to his job description. That the Respondent failed to provide any evidence of misconduct, poor performance or operational reasons for the termination.
14. Counsel relied on section 43 and 45 of the *Employment Act* that no employer shall terminate the employment of an employee unfairly and failure to prove reason for the termination is valid and fair procedure amounts to unfair termination. Counsel relied on the case of *Barasa Paul Isaac Vs Xfor Security Solutions (Ke) Ltd* (2015) eKLR on the requirement for both procedural and substantive fairness.
15. On the issue of whether the Claimant is entitled to the reliefs sought, counsel submitted that the claimant is entitled to the reliefs sought on grounds of having proved their case.
16. They further submitted that the respondent failed to comply with the mandatory requirements of the *Employment Act* and prayed that the Court allows the reliefs as sought in the statement of claim.

#### **Respondent's Submissions;**

17. The respondent through their advocates, Eliud Maina Karanja filed their submissions dated 19<sup>th</sup> December, 2024.
18. The issues raised by the respondent were whether the claimant's termination was unlawful and unfair, whether the claimant is entitled to the relief sought and who should bear the costs of the suit. On the issue of whether the claimant's termination was unlawful and unfair, the respondent submitted that it was clarified that his employment contract dated 17<sup>th</sup> July, 2017 clearly designated him as a territory development manager in the sales department under the General Sales Manager.
19. The respondent relied on the clauses of the employment contract allowing them to assign additional duties to the respondent related to his position when necessary. The respondent submitted that the respondent failed to prove all the allegations brought against them relying on various sections of the *Employment Act*, as related to issues raised and reported case law informing on the same.
20. The respondent submitted that the claimant signed a release and waiver agreement on 6<sup>th</sup> April, 2019 waiving all claims against the respondent related to his employment and received USD 7470 as full and final and dues.
21. The respondent submitted that this was not challenged on any front.
22. On costs the respondent submitted that costs be awarded to them.

#### **Determination**

23. The court has considered and reviewed the pleadings, testimony and submissions by both parties and comes up with the following issues;



**a. Was there an unfair termination?**

24. The Claimant was not subjected to a disciplinary hearing. No formal performance appraisal records were shown to justify the dismissal. The employer simply relied on Section 36 (termination with pay in lieu of notice), but this did not exempt them from complying with fair procedure under Section 41 of the *Employment Act*. Hence, Yes, the procedure for termination was flawed since it lacked fairness in process.

**b. Did the claimant prove the hostile work environment or overwork?**

25. The allegations as serious as they were, the claimant provided no independent evidence or witness to support these allegations. no email, complaints, or reports were filed. In such cases, for the court to make a finding in favour of the claimant, the burden is on him or her to provide evidence beyond mere allegations. Besides, if the respondent was a bad employer and was hostile to the claimant, he could not have rejoined them after the expiry of his initial contract. The Court therefore finds and holds that this claim has not been proved and is therefore dismissed. The same finding applies for the claim of forced overtime.

**c. Was the waiver/release agreement binding?**

26. The Claimant signed a "full and final settlement" agreement and received USD 7,470.24. He did not raise the issue of coercion in his pleadings or testimony at the time. Courts have upheld as binding, such agreements unless duress or fraud is proved, which was not done in the present case.

**Are the reliefs merited?**

27. Save for the finding that the termination was procedurally unfair, the rest of the claims are found unmerited for lack of evidence. Section 45 prohibits unfair termination of employment and one of the reasons a termination would be unfair is if it is carried out using an unfair procedure. The respondent admitted, they never took the claimant through a disciplinary hearing prior to the termination. However, the claimant signed the separation agreement upon which he was paid his final dues. He neither objected to the agreement nor pleaded any coercion or duress in his claim. The claimant had a two year contract and had worked for eighteen months by the time of termination. In this regard an award of two months' salary as compensation for unfair termination would be adequate in the circumstances. That is to say USD 5,500/- (2750 x 2). The respondent shall further provide the claimant with a certificate of service if not already provided.

It is so ordered

**DATED AT NAIROBI THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2025**

**DELIVERED VIRTUALLY THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2025**

**ABUODHA NELSON JORUM**

**PRESIDING JUDGE-APPEALS DIVISION**

